

DEPARTMENT OF HEALTH SERVICES

714/744 P Street
P.O. Box 942732
Sacramento, CA 94234-7320
(916) 657-0258



December 14, 2000

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL LETTER NO.: 235

TO: All Holders of the Medi-Cal Eligibility Procedures Manual

Article 1A -- Common-Law Marriage

Enclosed are updated pages to Article 1A of the Medi-Cal Eligibility Procedures Manual. We are also including recent information from the Social Security Administration Program Operations Manual System. This manual provides additional information on which states recognize common-law marriages and how this is determined. Although we do not follow the same rules as Social Security Administration on this issue, we thought it may be helpful.

Filing Instructions:

Remove Pages:

Insert Pages:

Article 1 TC-1
Pages 1A-1 through 1A-4

Article 1 TC-1
Pages 1A-1 through 1A-14

If you have any questions, please contact Margie Buzdas of my staff at (916) 657-0726.

Sincerely,

Original signed by

Glenda Arellano
Acting Chief
Medi-Cal Eligibility Branch

Enclosures



MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

CHAPTER – 2

Article 1 – DEFINITIONS, ABBREVIATIONS, AND PROGRAM TERMS

1A - COMMON-LAW MARRIAGE

1. Basic Requirements for a Common-Law Marriage
2. Chart-Summary of State Laws on Common-Law Marriage
3. Social Security Information on Common-Law

1B PERSONS LIVING IN THE HOME



MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

1A -- MEDI-CAL RULES ON COMMON-LAW MARRIAGE

California law, in Family Code, Section 308 and 308.5, recognizes any out-of-state marriage between a man and a woman as valid as long as it is valid where contracted or performed. In cases in which there was no formal marriage, it may be that a common-law marriage was established in another state.

Basic Requirements for a Common-Law Marriage

1. Agreement Must Exist to Become Husband and Wife

- a. This agreement may consist of a written contract but usually is just a simple, oral statement such as "I take you for my wife" or "You are now my wife." The words used must be in the present tense, and must express an intent to assume the relationship of husband and wife at the time involved and not at some future time.
- b. The parties must have capacity to enter the agreement. This means that:
 1. They must be of sound mind; and
 2. They must be of the minimum age.
- c. Must be Cohabitation Following the Verbal or Written Statements

Cohabitation is described as living together as husband and wife, each assuming the marital duties implicit in the relationship, usually including but not necessarily predicated on, sexual relations.

If these two facts are established and the state where they occurred recognizes common-law marriages, a marriage is in existence which is valid for all purposes in California and which can only be dissolved by formal divorce even in the state in which it was created.

2. Chart -- Summary of State Laws on Common-Law Marriage

The following chart is intended to give the worker a general idea of the possibility of a valid common-law marriage in the various states. The chart will not provide all the answers. If the details of the law of a particular state are needed, the county counsel, district attorney, or the legal staff of that state department should be consulted.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

State	Mutual Agreement	Cohabitation	Additional Requirements or Comments
Alabama	X	X	Recognized. Mutual assumption of marital duties
Alaska			Abolished 12/31/63
Arizona			Abolished 1902
Arkansas			Abolished 1905
California			Abolished 1895
Colorado	X	X	Recognized
Connecticut			Abolished
Delaware			Never recognized
District of Columbia	X	X	Recognized
Florida	X	X	Recognized before 1/2/68: cohabitation or mutual assumption of marital duties meets requirements.
Georgia	X	X	Recognized. Consummation according to law.
Hawaii			Not recognized.
Idaho	X		Abolished 1996
Illinois	X	X	Abolished 1905, except Quakers.
Indiana	X	X	Abolished 1/1/58; open acknowledgement of the relationship
Iowa	X	X	Recognized
Kansas	X	X	Recognized. Holding each other out to public as husband and wife.
Kentucky	X		Abolished
Louisiana			Not recognized
Maine			Not recognized
Maryland			Abolished
Massachusetts			Abolished; but can prove marriage by cohabitation
Michigan	X	X	Abolished 1/1/57
Minnesota	X	X	Abolished in 4/27/41
Mississippi	X	X	Abolished 4/5/56
Missouri			Abolished 6/20/21
Montana	X	X	Recognized. Assumption of marital relationship and repute in the community.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

<u>State</u>	<u>Mutual Agreement</u>	<u>Consent</u>	<u>Additional Requirements or Comments</u>
Nebraska	X	X	Abolished 1923. Holding out to public.
Nevada	X		Abolished 3/29/43.
New Hampshire	X	X	Partially Recognized
New Jersey	X		Abolished 12/1/39
New Mexico	X	X	Abolished 1929
New York	X	X	Valid prior to 1902 and from 1/1/08 to 4/29/33. Abolished 4/29/33. Open assumption of marital duties.
North Carolina			Abolished.
North Dakota			Abolished 1890
Ohio	X	X	Abolished 10/10/91. Holding each other out as husband and wife.
Oklahoma	X	X	Recognized
Oregon			Abolished
Pennsylvania	X	X	Recognized
Rhode Island	X	X	Recognized
South Carolina	X	X	Recognized
South Dakota	X	X	Abolished 7/1/59, marriage in fact, need exceptional circumstances.
Tennessee			Abolished
Texas	X	X	Recognized. Holding each other out to public as husband and wife.
Utah	X	X	Recognized as of 4/27/87
Vermont			Abolished
Virginia			Abolished
Washington			Abolished
West Virginia			Abolished
Wisconsin			Abolished 1918
Wyoming			Abolished 1931; standards unclear.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

3. THE SOCIAL SECURITY ADMINISTRATION'S (SSA) GUIDELINES ON COMMON-LAW MARRIAGES

NOTE: These guidelines are based on SSAs rules and not Medi-Cal rules; however, counties may find them useful when determining whether a state allows common-law marriage. Medi-Cal does not recognize putative marriages. These guidelines are to be used in conjunction with the Medi-Cal guidelines found on page 1A-2 through 1A-3. If the county finds that SSA guidelines are in conflict with the Medi-Cal guidelines when attempting to determine if a couple had a valid common-law-marriage in another state, counties should contact the state in question for clarification.

Social Security Act – Section 216(h)(1)(A)

Regulations No. 4 Sections 404.344, 404.345, 404.726

GN 00305.060 of the Program Operations Manual System (POMS)

A. Policy Requirements for a Common-Law Marriage

1. Basic Requirements

In some states a valid marriage may be created without a formal ceremony; these marriages are called common-law marriages. Individual state laws may vary slightly regarding the requirement to establish a common-law marriage; generally, the requirements are:

- a. The marriage is entered into by mutual consent of the parties to become husband and wife from that time on and is not solemnized by a ceremony (see 2.a below),
- b. The parties must have the intent to marry,
- c. The parties must consider themselves husband and wife,
- d. Both parties must be legally capable of entering into a valid marriage,
- e. The marriage must be contracted in a state where common-law marriages are recognized (see GN 00305.075), and
- f. In some states, the parties must cohabit and hold themselves out to the public as husband and wife (see 3 below).

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

2. Agreement to Marry

- a. Must contemplate a permanent union exclusive of all others,
- b. Must be in the present tense, and
- c. Must contemplate a marital status that cannot be terminated at will, but can be terminated only in the same manner as a ceremonial marriage, i.e., death, divorce or annulment.

3. Cohabitation

- a. Cohabitation means living together as husband and wife.
- b. Some states require cohabitation after an agreement to be husband and wife, the cohabitation need not be in the state where the agreement was made.

4. Sojourn

In some states a common-law marriage can arise from a temporary stay or sojourn within a state's borders if accompanied by holding out as husband and wife, even though the parties were never domiciled in that state. Check the appropriate state's laws.

5. Common-Law Marriages Outside the United States.

See GN 00307.255 for information on specific countries; they are generally not recognized.

B. Policy Termination of Social Security Benefits

A common-law marriage may also be established (in a state that recognizes such marriages) for termination of benefits. Establish the same factors as those mentioned in A.1 above. Difficulty may be encountered in developing the couple's intent to marry due to the possible adverse results. However, develop all the necessary factors and make a determination on the facts obtained.

NOTE: Develop a common-law marriage only if there is some indication that one exists.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

1. State Laws on Validity of Marriages Entered Into without a Ceremony

GN 00305.075 (see GN R00305.075 DEN)

a. Introduction

The following exhibit is a digest of state laws regarding the recognition of common-law marriages.

b. Exhibit

- Alabama** Recognized. Where a marriage (ceremonial or common-law) is contracted while an impediment exists, cohabitation of the parties in good faith after removal of the impediment will establish a valid common-law marriage as of the day the impediment is removed. Even if the parties at the time the marriage was contracted were aware of the impediment but they nevertheless manifest or demonstrate their desire to live as a married couple (i.e., conduct themselves and their affairs as would a married couple). Continued cohabitation after the removal of the impediment raises a presumption that a valid common-law marriage arose immediately upon removal of the impediment.
- Alaska** Recognized from March 7, 1939, through December 31, 1963; marriage license required, but solemnization not mandatory; however, there must be a marriage contract. Not recognized after December 31, 1963.
- American Samoa** Submit to the chief counsel if alleged.
- Arizona** Not recognized. However, see GN 00305.085 for the possibility that a putative marriage may have been created. If persons, while domiciled in Arizona, contract a common-law marriage in a state where common-law marriages can be contracted, the marriage will not be recognized as valid in Arizona if the parties intended by their actions to evade Arizona's laws.
- Arkansas** Not recognized.
- California** Not recognized. However, see GN 00305.085 for the possibility that a putative marriage may have been created. NOTE: Medi-Cal does not recognize a putative marriage.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Colorado	Recognized. A temporary stay by nonresidents will not of itself establish a common-law marriage.
Connecticut	Not recognized.
Delaware	Not recognized.
District of Columbia	Recognized. Both an express mutual agreement to enter into a present marriage and cohabitation after the agreement are required. If the parties agree to be husband and wife in ignorance of, or with the knowledge of, a legal impediment to their marriage, upon removal of that impediment, a common-law marriage results between the parties if they continue to live together as husband and wife.
Florida	<p>Recognized before January 2, 1968. The elements of a common-law marriage were legal capacity to contract marriage, mutual agreement of the parties to presently become husband and wife, and consummation of the agreement by cohabitation. Where the relationship was not valid in the beginning because one party had a prior undissolved marriage, their cohabitation as husband and wife after removal of the impediment and before January 2, 1968, created a common-law marriage; no new agreement of marriage after removal of the impediment had to be established.</p> <p>Where a purported common-law marriage arose before January 2, 1968, and such marriage was not valid because of an impediment but such impediment was removed after January 1, 1968, then a common-law marriage did not arise.</p>
Georgia	Recognized. Common-law marriage maybe evidenced by cohabitation and repute alone, from which an agreement may be inferred in the absence of evidence negating such an agreement. Good faith by at least one party must be shown to establish a common-law marriage by cohabitation and reputation. Where at least one of the parties to a common-law relationship, void from the beginning, believed in good faith that the marriage was valid and they continued to cohabit for many years after removal of the impediment and children were born of the relationship, it may be inferred

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

that the parties agreed, after removal of the impediment, that they would be husband and wife.

Guam Not recognized since at least 1948. If common-law marriage is alleged to have been contracted prior to 1948, submit to the chief counsel.

Hawaii Not recognized.

Idaho Not recognized, unless the common-law marriage contract was established prior to January 1, 1996.

Illinois Not recognized. (See GN 00305.085 for the possibility that a putative marriage may have been created). Illinois does not recognize the common-law marriage of its domiciliaries which arise out of brief sojourns to common-law marriage states.

Effective October 1, 1977, a ceremonial marriage prohibited because it was entered into prior to the dissolution of a prior marriage becomes valid when the impediment is removed and the parties continue to cohabit. Where the parties did not cohabit subsequent to September 30, 1977, this statute is not applicable and the marriage is not validated.

Indiana Recognized before January 1, 1958. If parties in good faith had attempted to contract a marriage to which there was an impediment, but both parties had believed in good faith they were validly married, a valid common-law marriage was created by their having lived together as husband and wife in Indiana after removal of the impediment. If either party knew of the impediment before its removal, it is necessary to have an agreement or ceremonial marriage after removal of the impediment in order to establish a valid marriage.

Iowa Recognized. Evidence of cohabitation of the parties after the agreement to be husband and wife is not required.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Kansas **Recognized.** Evidence of cohabitation of the parties after the agreement to be husband and wife is not required. In the absence of proof to the contrary, an agreement to be husband and wife may be implied where the parties have cohabited as husband and wife and were reputed to be such. Where a marriage is contracted while an impediment exists, cohabitation of the parties in good faith after removal of the impediment will establish a valid common-law marriage.

Kentucky **Not recognized.**

Louisiana **Not recognized.** However, see GN 00305.085 for the possibility that a putative marriage may have been created.

While a common-law marriage, valid where entered into is ordinarily recognized, a relationship originally bigamous and known to be such by the parties will not be recognized as a common-law marriage in the absence of a new ceremonial marriage or specific marital agreement even though continued cohabitation after removal of the impediment would give rise to a common-law marriage under the laws of the state where entered into.

Maine **Not recognized.**

Maryland **Not recognized.**

Massachusetts **Not recognized.** However, by statute, if parties domiciled in Massachusetts enter into a ceremonial marriage while one party is barred from remarrying by a Massachusetts divorce, and one party entered into the marriage in good faith, a valid marriage will arise upon removal of the impediment if the parties are at that time domiciled in Massachusetts. A new ceremonial marriage is not required.

Michigan **Recognized before January 1, 1957.** A common-law marriage could have been created in Michigan if the parties had agreed to be husband and wife and had held each other out to the public as such. If they had agreed to be husband and wife in a state not recognizing common-law marriage, their mere cohabitation as husband and wife in Michigan would have established a valid common-law marriage.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Even though there was no evidence of an express agreement to be husband and wife before January 1, 1957, it is possible to infer such an agreement. This inference can be based on long cohabitation of the parties during which time they had consistently held themselves out to friends, relatives, and to the public as husband and wife.

Minnesota	Recognized before April 27, 1941. (See GN 00305.085 for the possibility that a putative marriage may have been created.) Minnesota will not recognize the common-law marriage of its domiciliaries which arise out of brief sojourns to common-law marriage states.
Mississippi	Recognized before April 5, 1956.
Missouri	Not recognized.
Montana	Recognized.
Nebraska	Not recognized.
Nevada	Recognized before March 29, 1943.
New Hampshire	Not recognized. However, persons cohabiting and acknowledging each other as husband and wife and generally reputed to be such for three years and until one of them dies shall thereafter be deemed to have been legally married. All events must occur in New Hampshire.
New Jersey	Not recognized.
New Mexico	Not recognized.
New York	Not recognized.
North Carolina	Not recognized.
North Dakota	Not recognized.
Ohio	Recognized before October 10, 1991. A temporary stay by nonresidents was insufficient to establish a recognized common-law marriage. Common-law marriages established in Ohio on or after October 10, 1991, are not recognized.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Common-law marriages validly established in another state or nation at any time are recognized.

- Oklahoma Recognized. A temporary stay by nonresidents will not suffice as grounds for establishing a common-law marriage.
- Oregon Not recognized.
- Pennsylvania Recognized. An agreement to be husband and wife is essential to establish a common-law marriage in Pennsylvania; however, this agreement is implied if the parties cohabit as husband and wife for many years unless evidence indicates the parties did not agree to be husband and wife.
- Where only one of the parties to a marriage knew it was void because of an impediment, the marriage is valid without a new agreement if the parties continued to live together, as of January 1, 1954, of the date of removal of the impediment, whichever is later. Where both of the parties knew it was void because of an impediment, a new agreement is necessary after the removal of the impediment. If neither party knew of the impediment, mere cohabitation of the parties as husband and wife in Pennsylvania after removal of the impediment makes the marriage valid.
- Puerto Rico Not recognized.
- Rhode Island Recognized. Where parties contracted a bigamous, ceremonial marriage, a valid common-law marriage will arise from the parties' cohabitation as husband and wife after removal of the impediment. No new agreement of marriage is required if the evidence establishes clearly and convincingly that the parties intended at all times to be husband and wife. It is not necessary that the bigamous marriage be contracted in faith by either party. However, if a bigamous common-law marriage is involved and the parties were aware of the impediment, a new agreement is necessary.
- South Carolina Recognized. Where parties contract a bigamous marriage in good faith and both parties believe they are married, a valid common-law marriage arises if they cohabit as husband and wife after removal

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

of the impediment. However, if either party knew of the impediment, a new agreement of marriage after removal of the impediment, followed by cohabitation as husband and wife, is required to establish a common-law marriage.

South Dakota

Recognized before July 1, 1959. Where both parties to an attempted common-law marriage knew it was bigamous, a new marriage contract was required to establish a valid common-law marriage after removal of the impediment.

Tennessee

Not recognized. However, where parties free to marry have lived together for a long time and held themselves out to the public as husband and wife, both parties, as well as third parties, are in law not permitted to deny that they were validly married, provided there is an affirmative showing that (1) both parties acted in good faith in that they each honestly believed the relationship constituted a valid legal marriage; or (2) the party seeking the benefit of estoppel relied in good faith upon the representation of the other that the relationship constituted a valid marriage; or (3) the cohabitation followed a defective ceremonial marriage which the parties believed constituted a valid ceremonial marriage. This relationship in effect gives the survivor, and children of the marriage, inheritance rights in Tennessee; it has no effect outside Tennessee.

Texas

Recognized.

Prior to January 1, 1970, good faith at the inception of the relationship on the part of at least one of the parties, or a new agreement after removal of the impediment was required. Good faith means an intent to marry, together with the belief that there is no impediment to such marriage. If the parties enter into a relationship and all elements for a valid common-law marriage are present except there is a prior undissolved marriage known to the parties, there need be no new express agreement to give rise to a valid common-law marriage after removal of the impediment. Such agreement may be implied from continued cohabitation of the parties and their holding out to the public that they are husband and wife if during their relationship they maintained a continuous matrimonial intent.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Effective January 1, 1970, where the relationship was not valid because there was a prior undissolved marriage, a common-law marriage becomes valid when the prior marriage is dissolved if, since that time, the parties have lived together as husband and wife and presented themselves to others as being married. The marriage of a man and woman may be proved by evidence that (1) they agreed to be married (prior to September 1, 1989 this agreement could be inferred if (2) was proved); and (2) after the agreement they lived together in Texas as husband and wife and represented to others there that they were married. The parties to an "informal marriage" may execute a declaration of such marriage, which will be recorded by the county clerk. The Texas Law provides that such an "informal marriage" may be proved by evidence that a declaration of marriage was validly executed and further provides that the execution of a declaration is prima facie evidence of the marriage.

Forward to the Processing Center (PC) for submittal to the Regional Chief Counsel all cases in which such a declaration is submitted and the evidence in file does not establish that factors (1) and (2) listed in the preceding paragraph are met. A temporary stay by nonresidents in Texas will not of itself establish a common-law marriage. Effective September 1, 1989, any judicial or administrative proceeding in which a common-law marriage is to be proved must commence no later than one year after the date on which the relationship ended (usually, separation or death) or no later than one year after September 1, 1989, whichever is later. Also effective September 1, 1989, an agreement to be married may no longer be inferred based on proof that the parties to an alleged common-law marriage lived together as husband and wife. Whether or not an agreement exists requires a separate determination. See GN 00305.076 for application of the one year time limit and the effective date.

Utah

Effective April 27, 1987, a common-law marriage will be recognized in Utah if it arises out of a contract between two consenting parties who: (1) are capable of giving consent; (2) are legally capable of entering a solemnized marriage under Utah law; (3) have cohabited; (4) mutually assume marital rights, duties and obligations; and (5) who hold themselves out as and have acquired a uniform and general reputation as husband and wife. The determination or establishment of a marriage must occur during the relationship or within one year following the termination of that relationship. Evidence of a marriage may be manifested in any form.

MEDI-CAL ELIGIBILITY PROCEDURES MANUAL

Vermont	Not recognized.
Virginia	Not recognized.
Virgin Islands	Recognized before September 1, 1957.
Washington	Not recognized.
West Virginia	Not recognized.
Wisconsin	Not recognized. However, if parties enter into a common-law marriage in good faith in a state where such marriages could be contracted during a period when an impediment to their marriage exists, Wisconsin will recognize their marriage as valid if they later live in Wisconsin and cohabit as husband and wife after removal of the impediment. A valid marriage will arise without any new agreement of marriage by the parties. Wisconsin will not recognize the common-law marriage of its domiciliaries which arise out of brief sojourns to common-law marriage states.
Wyoming	Not recognized.